

**STATE OF GEORGIA
COUNTY OF FULTON
CITY OF SOUTH FULTON**

ORDINANCE No. 2017-009

ADOPTION OF EXCISE TAXATION OF ADULT BEVERAGES ORDINANCE

WHEREAS, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the City Council is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs, and local government;

WHEREAS, the duly elected governing authority of the City is the Mayor and City Council;

WHEREAS, Section 1.12(b)(41) of the City Charter authorizes the City Council to impose all taxes that may be allowed by law;

WHEREAS, O.C.G.A. § 3-4-80 permits the City to impose an excise tax on the sale of distilled spirits;

WHEREAS, O.C.G.A. § 3-4-130 permits the City to impose an excise tax on the sale of drinks containing distilled spirits;

WHEREAS, O.C.G.A. § 3-5-80 mandates that the City impose an excise tax on the sale of malt beverages;

WHEREAS, O.C.G.A. § 3-6-60 permits the City to impose an excise tax on the sale of wine by the package;

WHEREAS, the City requires revenue to operate and provide municipal services to City residents;

THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS
as follows:

Section 1: The City of South Fulton Code of Ordinances, Chapter 8, Title 2, Taxation, is hereby established and enacted as follows:

Title 2: TAXATION

CHAPTER 8. – EXCISE TAX ON ADULT BEVERAGES

Sec. 2-8001. - Sale of drinks containing distilled spirits.

- (a) *Imposed.* There is imposed upon the retail sale of drinks containing distilled spirits in the city a tax in the amount of three percent of the purchase price of the drink to the consumer. A record of each sale shall be made in writing and maintained for inspection by any authorized agent of the city.
- (b) *Licensee to collect and remit.* Every consumption on the premises licensee shall collect the tax imposed by this section from purchasers of drinks containing distilled spirits. The licensee shall furnish such information as may be required by the revenue division of the city to facilitate the collection of the tax.
- (c) *Customer receipts; credit sales.* If requested by the purchaser, a consumption on the premises licensee shall give to the purchaser a receipt on which the purchase price and the tax imposed by this section shall be itemized separately. In all cases where the purchase is by deferred payment or credit, the licensee becomes liable for the collection and payment of the tax at the time of delivery of the drink to the purchaser.
- (d) *Payment and returns by licensee.*
 - (1) Each licensee shall pay over the amount of taxes collected and coming due under this section in any calendar month to the city not later than the 20th day of the following calendar month.
 - (2) On or before the 20th day of each month, a return for the preceding month shall be filed with the revenue division of the city by each licensee liable for the payment of tax under this section. Returns shall be in such form as the city may specify and shall show the licensee's gross receipts from the sale of drinks containing distilled spirits and the amount of taxes collected or coming due thereon. Any amounts collected in excess of three percent of the taxable sales shall be reported and paid to the city.
 - (3) Licensees shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due, if said amount is not delinquent at the time of payment. The rate of deduction shall be the same rate authorized for deductions from state sales and use tax under O.C.G.A. § 48-8-50.

Sec. 2-8002. – Excise Tax – Wholesalers.

- (a) There is imposed by the city an excise tax on the first sale or use of malt beverages in the city, as follows:
 - (1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container containing not more than fifteen and one-half (15½) gallons and a proportionate tax at the same rate on all fractional parts of fifteen and one-half (15½) gallons;
 - (2) Where malt beverages are sold in bottles, cans or other containers, except barrel or bulk containers, a tax of five cents (\$0.05) per twelve (12) ounces and a proportionate tax at the same rate on all fractional parts of twelve (12) ounces.

- (b) There is imposed by the city an excise tax on the first sale or use of wine in the city at a rate of twenty-two cents (\$0.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (c) There is imposed by the city an excise tax on the first sale or use of distilled spirits in the city at the rate of twenty-two cents (\$0.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (d) The excise taxes provided for in this section shall be imposed upon and paid by the licensed wholesale dealer. Such taxes shall be paid on or before the twentieth day of the month following the month in which the alcoholic beverages are sold or disposed of by the wholesaler within the city.

Sec. 2-8003. - Deficiency assessment.

- (a) If the city has cause to believe that a return or the amount of tax paid to the city by a licensee is not proper, the city may compute and determine the amount due on the basis of any information available. One or more deficiency determinations may be made of the amount due for any month.
- (b) The amount of a deficiency determination shall bear interest at the rate of one percent per month, or fraction thereof, from the due date of the taxes until paid, in addition to any other penalties which may be imposed.
- (c) The city shall give notice of a deficiency determination to the licensee. The notice may be served personally or by mail. Service by mail shall be addressed to the named licensee at the licensed premises, shall be made by certified mail, and is complete when delivered with a receipt signed by the addressee or by the receipt of mailing from the United States Postal Service.
- (d) Except in the case of fraud, intent to evade this chapter, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the month following the month for which the amount is proposed to be determined or within three years after the return is filed, whichever is later.

Sec. 2-8004. – Failure to File Return

- (a) If a licensee fails to make a return, the city finance director shall make an estimate of the amount of the tax due for the period or periods for which a return was not filed. Such estimate may be based on any information available to the city finance director. Written notice of the estimate shall be given to the licensee in the manner specified by Section 2-8003(a).
- (b) The amount of the determination shall bear interest at the rate of one and one-half (1½) percent per month, or fraction thereof, from the last day on which the return could have been timely filed.

Sec. 2-8005. – Penalties and Interest.

Any licensee who fails to pay to the city within the time required any amount required to be paid under this section shall pay a penalty of twenty (20) percent of the amount not timely paid, in addition to the principal unpaid amount and interest at the rate of one and one-half (1½) percent per month.

Sec. 2-8006. – Actions for collection; overpayment.

- (a) At any time within three (3) years after the delinquency of any amount due under this section, the city may bring an action in the courts of this state, any other state, or the United States in the name of the city to collect the amount delinquent, together with penalties, interest, court fees, filing fees, attorneys' fees, and other legal fees incident thereto.
- (b) Whenever any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the city, it may be offset against any future liability for the tax.
- (c) If the licensee determines that he has overpaid or paid more than once and such fact has not yet been determined by the city, the licensee shall have three years from the date of payment to file a claim with respect to such overpayment or double payment. Such claim shall be in writing and shall state the specific grounds upon which it is based. The claim shall be audited. If the city approves the claim, the excess amount paid may be credited against any other amounts due from the licensee or refunded.

Sec. 2-8007. – Administration and enforcement of section.

- (a) The revenue division of the city shall administer and enforce the provisions of this section.
- (b) The city manager or his designee may promulgate rules and regulations for the enforcement of this section.
- (c) Every licensee engaging in the sale of mixed drinks shall keep such records, receipts, invoices, and other pertinent papers in such form as may be required by the city.
- (d) The revenue division of the city may examine the books, papers, records, financial reports, equipment, and facilities of any licensee engaging in the sale of any alcoholic beverage, retail or wholesale, in order to verify the accuracy of any return, or if no return is made to ascertain the amount of tax due.
- (e) In the administration of the provisions of this section, the revenue division of the city may require the filing of reports by any person or class of persons having in their possession or custody any information relating to purchases subject to taxation under this section.

Section 2: Severability

In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of South Fulton, Georgia, that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause or phrase were not originally a part of the ordinance.

Section 3: Repealer

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.


Section 4: Effective Date

Unless specifically specified elsewhere in this Ordinance, the effective date of this Ordinance shall be June 27, 2017.

The foregoing Ordinance No. **2017-009** was offered by Councilmember **Gilyard**, who moved its approval. The motion was seconded by Councilmember **Willis**, and being put to a vote, the result was as follows:

	AYE	NAY
William "Bill" Edwards, Mayor	_____	_____
Catherine Foster Rowell, Mayor Pro Tem	_____✓_____	_____
Carmalitha Lizandra Gumbs	_____✓_____	_____
Helen Zenobia Willis	_____✓_____	_____
Gertrude Naeema Gilyard	_____✓_____	_____
Rosie Jackson	_____✓_____	_____
khalid kamau	_____✓_____	_____
Mark Baker	_____✓_____	_____

THIS Ordinance adopted this 27th day of June 2017. **CITY OF SOUTH FULTON, GEORGIA**


WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:


MARK MASSEY, CITY CLERK



APPROVED AS TO FORM:


JOSH BELINFANTE, INTERIM CITY ATTORNEY